

TENNESSEE TITLE VI COMPLIANCE COMMISSION

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TO: All State Agencies

FROM: Tennessee Title VI Compliance Commission

RE: **Tennessee Title VI Compliance Commission
Advisory Memorandum No. 3**

Date: April 14, 2004

As you know, the Tennessee Title VI Compliance Commission (the "Commission") was established in August 2002 by Executive Order No. 34. Title VI of the Civil Rights Act of 1964 provides as follows:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

See also Tenn. Code Ann. § 4-21-904. Pursuant to Executive Order No. 34, it is the policy of the State of Tennessee to comply with Title VI, to prohibit discrimination, and to avoid the loss of federal funding. As one of many steps towards ensuring full compliance with Title VI by the State of Tennessee, the Commission is issuing this Advisory Memorandum.

Most state agencies administer continuing programs subject to Title VI and must take affirmative steps to monitor the compliance efforts of their sub-recipients. With the foregoing in mind, we advise you of the following.

I. Oversight and Monitoring of Continuing State Programs

When a state agency is given discretionary authority by a federal agency to dispense assistance to sub-recipients, said state agency must have an effective and verifiable oversight and monitoring program in place to monitor its sub recipient's compliance with Title VI. The state agency's method of administration should, as a minimum, include the following:

- [1] A public outreach and education program to inform sub-recipients of their compliance responsibilities.
- [2] A training program for sub-recipients regarding Title VI compliance requirements.
- [3] Consistent procedures for responding to complaints and notifying beneficiaries of their rights under Title VI.
- [4] Compliance review procedures to assess and measure whether a sub-recipient is meeting the requirements of Title VI [more than a self-survey and/or a checklist of activities].
- [5] Collect racial and ethnic [include National Origin] data on each sub-recipient's program.
- [6] Procedures for effective and verifiable pre-award and post-award evaluation of sub-recipient's compliance programs.

II. Data Collection and Analysis

Data collection and analyses is an essential, critical component of a Title VI implementation strategy. It is impossible to measure the success of your Title VI program without knowing the makeup of potential and actual participants and beneficiaries, the racial makeup of the affected communities, and the racial and ethnic makeup of staff administering federal assisted programs and activities. Each state agency should develop and maintain a database of program participants and beneficiaries.

Demographic information relative to program administration staff should be evaluated and studied to determine whether there is a causal nexus employment discrimination against beneficiaries. Language addressing this issue can be found in the "Title VI Legal Manual" published by the U. S. Department of Justice, Civil Rights Division," which provides:

In regard to Federal financial assistance which does not have providing employment as a primary objective, the provisions of paragraph [c] [1] [prohibitions where objective is employment] apply to the employment practices of the recipient if discrimination on the grounds of race, color, national origin in such employment practices tends, on the grounds of race, color or national origin, to exclude persons from participation in, to deny them the benefits of or be subject them to discrimination under the program receiving Federal financial assistance. In any case, the provisions of paragraph [c] [1] of this section shall apply to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

The Commission hereby urges state agencies to collect employment data on their sub-recipients to improve their ability to effectively monitor their sub-recipient's efforts to comply with Title VI.

The "Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964," allow state agency recipients to defer decisions on sub-recipient applications for assistance. Moreover, said guidelines provide that "it is legal permissible temporarily to defer action on an application for assistance, pending initiation and completion of [statutory remedial] procedures—including attempts to secure voluntary compliance with Title VI." State agencies can adopt a flexible case by case approach to determine when deferral is appropriate. When a decision is made to defer approval of a sub-recipient's application for assistance, the state agency should, without delay, seek a voluntary resolution and, if no settlement is reached, refuse to award assistance.

Over and above the matters set forth in this Advisory Memorandum, it is the responsibility of your agency to know, understand and comply with all of the requirements, and prohibitions, arising from Title VI and its regulations. The Commission stands ready to assist in the same.

Your assistance in ensuring that the State of Tennessee complies in all respects with Title VI is greatly appreciated. If you have any questions or require any assistance, please contact me at (615) 244-9270 or John Birdsong, Director of the Tennessee Title VI Compliance Commission, at (615) 253-6717. Any written correspondence to the Commission should be directed as follows:

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